

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks of September 11, 2001	03-MDL-1570 (GBD/FM)
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**This document relates to: *Thomas Burnett, Sr. et al., v. Al Baraka Inv. & Dev. Corp., et al.*,
Case No. 03-CV-9849**

**AFFIDAVIT OF SERVICE AND IN SUPPORT OF REQUEST FOR ISSUANCE OF
CLERK'S CERTIFICATE OF DEFAULT AGAINST THE REPUBLIC OF SUDAN, THE
MINISTRY OF THE INTERIOR OF THE REPUBLIC OF SUDAN, AND THE
MINISTRY OF DEFENSE OF THE REPUBLIC OF SUDAN**

STATE OF SOUTH CAROLINA)
) SS.:
COUNTY OF CHARLESTON)

JODI WESTBROOK FLOWERS, ESQ., deposes and says:

1. I am a member of Motley Rice LLC, attorneys for the *Burnett* Plaintiffs. I am familiar with the facts and circumstances in this action. I am counsel of record in this case and admitted to practice in this MDL where I also serve on the Plaintiffs' Executive Committee for the Personal Injury and Death Claims. *See* 03-MDL-1570 Docket No. 248.
2. Pursuant to Fed.R.Civ.P. 4(l), 55(a), and Local Rule 55.1 of the U.S. District Court of New York ("SDNY"), I make this Affidavit as proof of service and in support of Plaintiffs' application for entry of a certificate of default against Defendants, The Republic of Sudan, and its agents and instrumentalities, The Ministry of the Interior of The Republic of Sudan and The Ministry of Defense of The Republic of Sudan (collectively "Sudan Defendants").

3. This is an action to recover damages owed by the Sudan Defendants to Plaintiffs for injuries and damages resulting from the terrorist attacks upon the United States of September 11, 2001 (the “September 11th Attacks”). The Sudan Defendants have been sued based on the material support provided to al Qaeda in furtherance of a conspiracy to commit acts of international terrorism against the United States, its citizens and allies, of which the September 11th Attacks were a direct and foreseeable result. *See* Third Amended Complaint (02-CV-1616 (U.S. District Court for the District of Columbia) Docket No. 29) at ¶¶ 469-497, 498-501, and *passim*.

4. Jurisdiction of this Court over the Sudan Defendants is invoked and established pursuant to 28 U.S.C. § 1330, as the claims against the Sudan Defendants fall within the exceptions to sovereign immunity set forth at 28 U.S.C. §§ 1605(a)(5) and 1605(a)(7) (1605A as amended January 28, 2008 as part of the National Defense Authorization Act for Fiscal Year 2008, Pub.L. 110-181, Div. A, Title X, § 1083(a)(1) (Jan. 28, 2008), 122 Stat. 338) of the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1602 *et seq.*

5. This action was commenced on August 15, 2002 by the filing of the Summons and Complaint in the U.S. District Court for the District of Columbia. *See* 02-CV-1616 Docket No. 001. An Amended Complaint was filed on September 4, 2002. *See* 02-CV-1616 Docket No. 003. The Third Amended Complaint was filed on November 22, 2002. *See* 02-CV-1616 Docket No. 029). The Honorable James Robertson presided over the *Burnett* litigation until the case was transferred by the Judicial Panel on Multidistrict Litigation to the U.S. District Court for the Southern District of New York on January 2, 2004. The Sudan Defendants were served with a copy of the Summonses, Complaints and Notices of suit, in accordance with the FSIA, as set forth herein.

6. The Clerk of the Court of the U.S. District Court for the District of Columbia issued Summonses against The Republic of Sudan and its agents and instrumentalities, The Ministry of the Interior of The Republic of Sudan and The Ministry of Defense of The Republic of Sudan. On November 7, 2002, the *Burnett* Plaintiffs attempted service on the Sudan Defendants by transmitting the Summonses and Third Amended Complaints via DHL to the Minister of External Relations for The Republic of Sudan in Khartoum—pursuant to the service provisions of the FSIA codified at 28 U.S.C. § 1608(a)(3).

7. The Summonses and Complaints as to Defendants, The Republic of Sudan, The Ministry of the Interior of The Republic of Sudan, and The Ministry of Defense of The Republic of Sudan were returned to counsel unserved in January 2003. Plaintiffs then sent another copy of the Summonses and Complaints to the District Court in Washington, D.C. in an attempt to effectuate service on November 4, 2003, again in accordance with 28 U.S.C. § 1608(a)(3).

8. On April 2, 2004, Plaintiffs wrote to the U.S. District Court's office in New York enclosing copies of the Summonses and Complaints, and DHL waybills requesting the Court forward the necessary materials pursuant to 28 U.S.C. § 1608(a)(4) for service via the State Department. *See* 03-MDL-1570 Docket Nos. 112, 113 & 114.

9. Service of process as to Defendants, The Republic of Sudan, The Ministry of the Interior of The Republic of Sudan, and The Ministry of Defense of The Republic of Sudan was confirmed via letter dated January 12, 2005 from William P. Fritzlen, Attorney Advisor, Office of Policy Review and Interagency Liaison, U.S. Department of State, Washington, D.C. *See* Exhibit A. In his letter, Mr. Fritzlen confirms that the U.S. Embassy in Khartoum, Sudan duly transmitted the three Summonses, Complaints and Notices of suit to the Ministry of Foreign Affairs of The Republic of Sudan under cover of diplomatic notes Nos. CONS/12/08/2004/652,


CONS/12/08/2004/653, and CONS/12/08/2004/654 dated December 8, 2004. *See* Exhibit A—Proof of Service attached hereto showing that certified copies of the U.S. Embassy's diplomatic notes as well as the transmitted documents were enclosed and sent to Joseph LaMura, Chief Deputy Clerk, U.S. District Court for the Southern District Court of New York on January 12, 2005.

10. The Sudan Defendants have not answered or otherwise responded to the Complaint since service was perfected in January of 2005, and the time for the Sudan Defendants to answer or otherwise respond to the Third Amended Complaint has long expired.

11. Plaintiffs request execution of a Clerk's Certificate of Default, which is attached hereto, to provide to The Honorable George B. Daniels in connection with a Motion for Default pursuant to Fed.R.Civ.P. 55(a) and Local Rule 55.1.

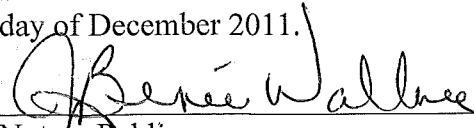
WHEREFORE, the Plaintiffs in *Thomas Burnett, Sr. et al., v. Al Baraka Inv. & Dev. Corp., et al.*, Case No. 03-CV-9849, respectfully request a Clerk's Certificate of Default against Defendants, The Republic of Sudan, and its agents and instrumentalities, The Ministry of the Interior of The Republic of Sudan and The Ministry of Defense of The Republic of Sudan.

Dated: December 29, 2011
Mt. Pleasant, South Carolina



JODI WESTBROOK FLOWERS, ESQ.
S.C. BAR NO. 06630
MOTLEY RICE LLC
28 BRIDGESIDE BOULEVARD
MT. PLEASANT, SC 29464
843.216.9163

Sworn to before me this 29th
day of December 2011.



Notary Public

My commission expires 5/16/14

EXHIBIT A

2005/JAN/19/WED 04:01 PM PRICE LAW OFFICE

FAX No. 317 633 8797

P. 004

01/19/2005 10:50 FAX 212 805 0389

001

FACSIMILE TRANSMITTAL COVER SHEET

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

OFFICE OF THE CLERK

U.S. COURTHOUSE

500 PEARL STREET

NEW YORK, NY 10007-1312

FAX # (212) 805-0389

TEL # (212) 805-0136

DATE: 1/19/05

TO: Erin M. Amos

DESCRIPTION: Letter from the U.S. State Department

NUMBER OF PAGES INCLUDING SHEET: 3

FROM: Anne-M. Ford

OFFICE: Clerk of the Court

TELEPHONE: 212-805-0148

2005/JAN/19/WED 04:01 PM PRICE LAW OFFICE

FAX No. 317 633 8797

P. 002

01/19/2005 10:50 FAX 212 805 0389

☒ 002



United States Department of State

Washington, D.C. 20520

January 12, 2005

Mr. Joseph LaMura
Chief Deputy Clerk
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

re: Thomas Burnett Sr., et al. v. Al Baraka Investment & Development
Corporation and the Republic of Sudan, et al., Case No. 03-CV-9849 (RCC)

Dear Mr. LaMura:

I am writing regarding the Court's request for transmittal of three summonses, complaints, and notices of suit to the Ministry of Foreign Affairs of the Republic of Sudan pursuant to 28 U.S.C. Section 1608(a)(4) for service upon the Republic of Sudan, the Ministry of Interior of the Republic of Sudan and the Ministry of Defense of the Republic of Sudan as defendants in the above referenced case.

The American Embassy in Khartoum, Sudan transmitted the summonses, complaints and notices of suit to the Ministry of Foreign Affairs of the Republic of Sudan under cover of diplomatic notes Nos. CONS/12/08/2004/652, CONS/12/08/2004/653 and CONS/12/08/2004/654 dated December 8, 2004 and delivered December 9, 2004. Certified copies of the Embassy's diplomatic notes and copies of the documents transmitted to the Ministry of Foreign Affairs are enclosed herewith in accordance with the procedures established for the implementation of the Foreign Sovereign Immunities Act.

Should you have any questions regarding this matter, please do not hesitate to contact me at (202) 736-9115.

Sincerely,

A handwritten signature in dark ink, appearing to read "William P. Fritzlen".

William P. Fritzlen
Attorney Adviser

Office of Policy Review and Interagency Liaison

Enclosures As Stated

2005/JAN/19/WED 04:01 PM PRICE LAW OFFICE

FAX No. 317.633.8797

P.003

01/19/2005 10:51 FAX 212.805.0389

0003

cc: William N. Riley
Young Riley Dudley & DeBrot
3815 River Crossing Parkway
Suite 340
Indianapolis, Indiana 46240

01/19/2005 WED 16:54 [TX/RX NO 5681]